

THE UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-10511-WGY
Vol 1, Pages 1 - 76

UNITED STATES OF AMERICA, et al,
Plaintiffs

vs.

JETBLUE AIRWAYS CORPORATION, et al,
Defendants

For Bench Trial Before:
Judge William G. Young

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, November 28, 2023

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 (Dr. Hill takes the stand.)

4 THE COURT: Did you want to do some redirect?

5 And good morning. If you'd remind the witness.

6 THE CLERK: I'd like to remind you, sir, that you
7 are still under oath.

8 Do you understand?

9 THE WITNESS: I do.

10 MR. GELFAND: Good morning, your Honor, I
11 shouldn't have interrupted you, but we actually have no
12 further questions.

13 THE COURT: Well that's fine. Then that was
14 superogatory and you may step down.

15 (Laughter.)

16 MR. GELFAND: But I do have some housekeeping on
17 exhibits, if I could?

18 THE COURT: Go right ahead.

19 MR. GELFAND: All right.

20 The slide presentation that Dr. Hill used
21 yesterday had several -- a number, I think maybe 17, um,
22 documents that had been marked. They're summary
23 exhibits under Rule 1006. They'd been marked for
24 identification. We conferred with the government. They
25 have no objection to us moving them into evidence.

1 I have the collection here, your Honor, with the
2 list of the identifying letters and the exhibit numbers.
3 If you wish, I can read them if you wish.

4 THE COURT: No reason to read them. I thank you
5 for preparing it. They will be received in evidence.
6 Just what number are we up to now?

7 MR. GELFAND: All right. So this will get us from
8 883 through 899.

9 THE COURT: Thank you very much.

10 (Pause.)

11 THE COURT: The Clerk tells me there's more.

12 THE CLERK: I was handed some this morning. It
13 brings us up to 910.

14 MR. GELFAND: I'm sorry, I might have a
15 misnumbering. It's next section, your Honor, it's the
16 next witness.

17 THE COURT: But it's by agreement and the Clerk
18 already has it.

19 All right, you may call your next witness.

20 MR. GELFAND: All right, Mr. Hafer will do that,
21 your Honor.

22 Thank you very much.

23 MR. HAFER: Zach Hafer for JetBlue. We call
24 Mr. Andrew Nocella.

25 THE COURT: He may be called.

1 THE CLERK: Please remain standing, raise your
2 right hand.

3 (ANDREW NOCELLA, sworn.)

4 MR. HAFER: May I proceed, your Honor?

5 THE COURT: You may.

6

7 *****

8 ANDREW NOCELLA

9 *****

10

11 DIRECT EXAMINATION BY MR. HAFER:

12 Q. Good morning, Mr. Nocella. Could you please state
13 your full name and spell your last name for the record.

14 A. Andrew Paul Nocella, N-O-C-E-L-L-A.

15 Q. How are you currently employed?

16 A. I'm employed by United Airlines.

17 Q. What is your title at United Airlines?

18 A. I'm the Chief Commercial Officer of United.

19 Q. How long have you had that title?

20 A. About 5 years.

21 Q. How long have you been in the airline industry,
22 Mr. Nocella?

23 A. Oh, close to 30 years now.

24 Q. Could you briefly walk the Court through, um,
25 starting when you began in the industry, the various

1 positions you've held?

2 A. Sure. I started with Continental Airlines in the
3 early 1990s, um, I worked as a Senior Analyst and a
4 manager in the Network Planning Department. I then left
5 Continental to join America West Airlines, I worked
6 there for about 5 years as the VP of Network in America
7 West Airlines. After that I went to U.S. Airways, um,
8 and I worked there for about 3 years in Washington,
9 D.C., again in Network, but I had also taken on pricing
10 and management. After that U.S. Airways and America
11 West merged, so I continued at U.S. Airways and worked
12 in the combined company for another 5 years or so. And
13 then after that, U.S. Airways turned into American
14 Airlines, so I joined American Airlines as the Chief
15 Marketing Officer in approximately the 2014 time period.
16 And then I left American about 6 years ago and I joined
17 United.

18 Q. Taking you back to the present day. What are your
19 daily responsibilities as Chief Commercial Officer?

20 A. My responsibilities lie with really creating a
21 commercial business plan for the airlines, so that
22 includes where we fly, the type of aircraft we fly, our
23 product segmentation strategies, the frequent flier
24 program, the Marketing and Sales departments, and things
25 like that. All largely associated with either the

1 revenue potential or the business.

2 Q. And were you associated with United's Pricing and
3 Revenue Management department?

4 A. That department reports to me.

5 Q. And what did that department do?

6 A. That department does two primary things. One, is
7 they set our prices, which we have obviously many many
8 of, for all the places we fly, and second, they
9 determine when we actually sell a price point.

10 Q. And finally, Mr. Nocella, who do you report to?

11 A. I report to Scott Kirby, our CEO.

12 Q. Mr. Nocella, I'd like to begin by showing you, um,
13 a document that's already in evidence, it should be in
14 the exhibit binder in front of you behind Tab, um, 130.

15 A. (Looks.) Okay, I'm at Tab 130.

16 Q. It's already in evidence, but would you just look
17 at it, there's a cover e-mail and then a long deck
18 behind it. Would you just look at the first 1 to 3
19 pages and tell me if you recognize that document?

20 A. I do.

21 Q. What is it?

22 A. This was a presentation I gave to our board of
23 directors, um, a few months after joining United, in the
24 fall of 2017, on our early commercial strategy that my
25 team was developing.

1 Q. Mr. Nocella, I'm going to ask you to turn now to
2 Slide 75 in that document, which is the Bates ending
3 4740.

4 Just a caution that there's confidential
5 information in the document that we redacted on the
6 screen in court, but not on the document in front of
7 you. So just to caution you not to talk about
8 confidential information.

9 What is Slide 75 depicting, Mr. Nocella?

10 A. Slide 75 is, at the very high level, are revenue
11 segmentation strategies. So this is a wide-body jet and
12 it's showing the different types of products we intend
13 to sell on board the jet, which we've classified into
14 five categories from Basic Economy to our Premium Cabin,
15 which we call "Polaris."

16 Q. The notation in the title about "Segmentation
17 Increasing Customer Choice," what does that mean?

18 A. So from United's perspective, we desire to create
19 a business plan strategy that includes customers of all
20 types and flying for all reasons. And so sometimes a
21 customer wants to fly in a very premium experience --
22 and obviously some want to fly on a basic economy
23 experience, and this creates a diversified evolution for
24 United that we think is right for our commercial
25 strategy.

1 Q. Could you turn -- there's a tab in your binder
2 market "Nocella Demonstrative A." Could you turn to
3 that. It's probably precedes the --

4 A. Well let's see. (Turns.) Yes, I have that.

5 Q. Do you recognize that document?

6 A. Um, yes, that's a route map for United Airlines,
7 um, domestic and I think Canadian system.

8 THE COURT: Just go back to the presentation
9 to the board of directors for a moment, if you could,
10 um, where you were discussing segmentation, and
11 immediately below the logo of the plane is, um, the
12 spectrum of fares that one could buy, and I'm just
13 interested in the titles.

14 Do you actually sell to the public, um, from --
15 you call them "Basic Economy" up to "Premium Cabin," or
16 in smaller font below the United logo there are what are
17 called "Economy," "Economy Plus," "Premium Plus," and
18 "Business Class." I just want to know what the public,
19 um, understands about this segmentation?

20 THE WITNESS: Sure.

21 They mainly understand the logo, um, that you just
22 described. I'm not sure why the very first one doesn't
23 say "Basic Economy," but if you're on the United
24 website, I think it's very clear that you have the
25 opportunity to buy a Basic Economy seat. But the rest,

1 the logos, whether it's "Premium Plus" or "Polaris" or
2 "Economy," is what you'd see on United.com.

3 THE COURT: Thank you.

4 Forgive me, Mr. Hafer. We'll go back to your
5 demonstrative.

6 MR. HAFER: Thank you, your Honor.

7 Q. Mr. Nocella, I believe you indicated that this is
8 United's domestic map and it also includes Canada?

9 A. Correct.

10 Q. The cities that are in red, what are those?

11 A. We consider those cities at United our hub cities
12 for which within the continental United States we
13 classify 7 of our cities as hubs.

14 Q. What are those?

15 A. They're New York, Newark, Washington Dulles,
16 Chicago, Denver, Houston, Los Angeles, and San
17 Francisco. Cleveland is indicated as red here, but it's
18 not a hub for United Airlines, so I'll correct that. It
19 remains -- it was a hub in the past. Which is, I think,
20 why maybe it's red.

21 Q. Obviously there's a lot of blue on here,
22 Mr. Nocella, but approximately how many domestic flights
23 does United Airlines --

24 A. United currently operates somewhere north of 4,000
25 flights per day, 4,200, 4,300 flights per day is my

1 guess.

2 Q. Moving from the network to the fleet, Mr. Nocella.
3 To orient, I want to ask you some questions about
4 United's fleet, but to do that could you start by
5 telling the Court, what is "United Next"?

6 A. Sure. United Next was our commercial business
7 plan that we officially branded as "United Next" during
8 the middle of the pandemic, and it's our business plan.
9 We took the business forward in our post-pandemic era by
10 changing a number of the core, you know, issues that
11 United had felt and seen prepandemic to be able to grow
12 our business successfully.

13 Q. And as it relates to the fleet, what were the sort
14 of objectives with respect to the fleet for United Next?

15 A. So for United Next we placed a rather large order
16 in the summer of 2021 and we followed that up with
17 another two orders since then, at least two orders since
18 then. So we had approximately 800 aircraft on order.
19 And one of the biggest things we were trying to
20 accomplish in United Next was the retirement and
21 replacement of a large number of single-class 50-seat
22 RJs to be replaced by these larger and more modern, more
23 customer-preferred aircraft.

24 And so that, um, the key tenet of United Next is
25 the upgauge of the airline. We were going to go from an

1 airline that had an average of 104 seats per departure
2 in North America prepandemic -- I'm sorry, about 2017,
3 '18, up to approximately 140 seats per departure in the
4 near future.

5 Q. I think you've explained it, but you used the term
6 "upgauge." What does that mean?

7 A. So the aircraft that we're replacing were 50-seat
8 single-class RJs, so they had very few product amenities
9 on board, and the aircraft we're acquiring are modern
10 Boeing and Airbus jetliners that seat 160 to 200
11 passengers and have multiple classes of service on
12 board. So we're able to diversify our revenue streams
13 and offer more customer choice.

14 Q. Mr. Nocella, could you turn in the binder behind
15 130, there's an exhibit marked BGY. Would you look at
16 that document and let me know if you recognize it?

17 A. I do recognize it.

18 Q. What is it?

19 A. This is the presentation deck that we presented to
20 the investors to announce United Next on June 29th,
21 2021.

22 Q. And was that presented publicly?

23 A. It was presented publicly in New York City.

24 Q. And are decks likes those, Mr. Nocella, made in
25 the course of a regularly-conducted business activity at

1 United?

2 A. They are.

3 Q. Are they routinely made in the ordinary course of
4 United's business?

5 A. They are.

6 Q. Are they typically made at or near the time of the
7 event in question, June 29th, 2021?

8 A. Yes.

9 Q. And are they typically made by a person with
10 knowledge or people with knowledge of the underlying
11 facts depicted therein?

12 A. Yes.

13 MR. HAFER: Your Honor, I offer Exhibit BGY.

14 THE COURT: Well the Clerk has a list apparently
15 by agreement. I'm just trying to save time.

16 Have we gone over this list and given them
17 numbers?

18 MR. TEITELBAUM: Your Honor, I don't believe this
19 one is included in, um, the predetermined list.

20 THE COURT: It's not.

21 MR. TEITELBAUM: But with that being said, the
22 United States has no objection.

23 THE COURT: Thank you. So BGY is admitted and the
24 Clerk will remind me of the next number.

25 Yes, 911. It's Exhibit 911 in evidence.

1 And proceed, Mr. Hafer.

2 MR. HAFER: Thank you, your Honor.

3 (Exhibit 911, marked.)

4 Q. Mr. Nocella, could you turn to Page 5 of the deck,
5 which is the Bates ending 0313.

6 A. (Turns.) Okay.

7 Q. This slide is titled "Capitalizing on United's
8 Unique Competitive Advantages." The second bullet
9 refers to United being the only airline with the hubs in
10 7 of the largest and most premium markets. Why is that
11 a competitive advantage?

12 A. So United's hubs happen to be located in markets
13 that, um, have a lot of premium business, business
14 travel or high-end leisure travel, or global travel, and
15 that is different than many of our -- in fact all of our
16 competitors which have hubs that have different
17 characteristics that have less premium demand to and
18 from the hubs. And that just means that from our
19 perspective, as we develop a business plan, being able
20 to attract those customers and their willingness to buy
21 a premium product is a key aspect to what we think
22 about.

23 Q. The third bullet there refers to "United being the
24 only airline that didn't retire its wide-body-fleet
25 types during the pandemic." What does that mean and why

1 is that a competitive advantage?

2 A. Well during the pandemic there was a lot of
3 uncertainty as to whether travel would return and when
4 it would return, and we always believed it would. But
5 during the pandemic there was also a lot of pressure to
6 reduce the size of one's fleet, um, to simplify one's
7 fleet, and we chose to believe differently, that it
8 would be better to just temporarily ground the aircraft,
9 while there's no demand, and then be ready for the
10 bounce-back that occurred post-pandemic, and in fact I
11 think we've been proven right on that. And so we've
12 been able to rapidly grow our global network between
13 aircraft we didn't retire and aircraft we've taken
14 delivery of, and United today is the largest global
15 airline to and from the United States.

16 Q. And finally the reference in the last bullet there
17 to being "the only airline within an approximate 30
18 percent gauge increase." What is that referring to?

19 A. So, um, gauge is a really important thing, it
20 drives a lot of consumer benefits, but it also drives
21 our costs down. And so as we replace small aircraft
22 with big, um, we're able to dramatically enhance the
23 quality of our product with different features that
24 weren't on board the single-class RJs, including, you
25 know, multiple cabin types, large overhead bins, really

1 great WIFI, and we're also able to do it while we lower
2 our costs. You know it's not very often in a business
3 where you can enhance your product and lower your unit
4 costs at the same time. And that's really one of the
5 key tenets of United Next's plan.

6 Q. And you may have said this, you've used the term
7 "RJ" a few times. What is an "RJ"?

8 A. An "RJ" from United is an aircraft type that seats
9 76 passengers or less.

10 Q. And the acronym stands for "Regional Jet," is that
11 correct?

12 A. That's correct, "Regional Jet."

13 Q. Could you turn, if you would, to Slide 8, which is
14 the Bates number ending 0316.

15 A. (Turns.)

16 Q. What's being depicted on this slide, Mr. Nocella?

17 A. So again this is a very high-level summary of the
18 key tenets of the United Next plan and this is, um, you
19 know highlighted in the -- you know the important things
20 as we try to create a premier global carrier. One is
21 the "Global Network," to achieve more potential from it.
22 One is to "Optimize the Fleet," which is the gauge gap
23 that I just referred to. One is to "Create a Leading
24 Product and Decommoditize our Product versus Others."
25 And then the last is "Best Service," to invest in the

1 customer experience and push our MPS scores higher.

2 Q. As of today, staying on the fleet for a minute,
3 approximately how many aircraft is United operating?

4 A. As of today we have just north of 900 mainline
5 aircraft and probably about 340 to 350 regional jets in
6 our system.

7 Q. So 1240 to 1250 in total?

8 A. Approximately, yes.

9 Q. You mentioned earlier this part of United Next is
10 "Purchase," I think you said approximately 800 new
11 aircraft over a particular period of time?

12 A. I believe it's the early 2030s to 2031,
13 approximately, or 2032.

14 Q. Will those 800, um, all be added to that 1240 to
15 1250 or are there ones which will be retired?

16 A. There will be retirements as aircraft reach a
17 certain age or economic status, um, they have to be
18 retired. We do intend to grow the airline and exactly
19 how much we grow will depend on the economics of the
20 airline, but many of our oldest jets will have to be
21 retired. But as I said earlier, a large number of
22 single-class 50-seat regional jets have already been
23 retired since the --

24 Q. Focusing just on 2024, "Net of Retirements,"
25 approximately how many additional aircraft does United

1 intend to take delivery of?

2 A. It's subject to many factory constraints, so it's
3 approximately 115 to 120 aircraft are scheduled for
4 delivery next year.

5 Q. And kind of going forward, 2025 and forward,
6 approximately how many additional aircraft does United
7 intend to take delivery of?

8 A. So I think the best way to say that from the
9 publicly-available information is, you know, there's
10 somewhere in the neighborhood of 650 or so aircraft left
11 to deliver over the period from 2025 to 2032. In
12 addition to that, United holds options to acquire more
13 aircraft which we have not confirmed.

14 Q. Would you turn to Slide 17 in that deck, which is
15 the Bates ending 0325.

16 A. (Turns.) Okay.

17 Q. You spoke a little bit earlier about gauge. But
18 could you describe what this slide is depicting?

19 THE COURT: Before we leave the page we're on,
20 what does it mean to "decommoditize and differentiate
21 versus others," what does that mean?

22 THE WITNESS: Sure. In 2019, there were
23 fast-growing ULC carriers, namely Spirit and Frontier,
24 that had a very single-class product mentality, and
25 we're really working to commoditize air travel. And

1 what United was trying to do was continue to have this
2 Basic Economy product, um, that was, I think, very
3 commoditized, but also have a large swath of our cabin
4 and product offerings that were not in that category and
5 were not commoditized, that people seeking a better
6 experience, whether it was a flatbed going to London or
7 a Premium Plus seat going to Los Angeles, could buy-up
8 into that better experience.

9 THE COURT: I'm not conversant with your
10 definition of the word "commoditize." Could you give me
11 your definition?

12 THE WITNESS: My definition would be a consumer
13 that's simply looking for the lowest possible price.

14 THE COURT: Thank you.

15 Mr. Hafer, could you orient me again?

16 MR. HAFER: Yes, your Honor. Could you turn
17 please to Slide 17, Bates ending 0325.

18 THE COURT: Go ahead.

19 Q. Mr. Nocella, what is this slide depicting?

20 A. I talked about gauge earlier and this is a slide
21 that depicts what our gauge would look like from going
22 from 2019 to the 2026 estimate that we had. So in 2019,
23 the average United airplane departed with 104 seats per
24 departure, which we considered extremely low at the
25 time, and we've already moved that up. In fact I think

1 even today we're already at this 130-something number
2 and we expect to go beyond that into the 140s.

3 Q. You've said before -- you've alluded I think at
4 the beginning of your testimony to it's rare when you
5 would sort of enhance the customer experience and lower
6 costs. How is it that -- is that related to gauge, this
7 increasing gauge?

8 A. It is. Generally the larger the aircraft, the
9 more unit cost-effective it is, so the lower its -- the
10 airline business we'd say its CASM is, which is just
11 cost per available seat mile. So a 50-seat jet has a
12 very high cost per available seat mile and a 737 Max 9
13 or 10 has a dramatically lower one. And so as we
14 replace the little aircraft with the big aircraft, our
15 unit cost structure tends to improve. And again it's
16 kind of rare to have unit cost going down as the product
17 quality goes up in a business.

18 Q. I want to turn now to a new topic that your
19 Honor has asked you some questions -- his Honor has
20 asked you some questions about Basic Economy.

21 What is Basic Economy on United?

22 A. So Basic Economy is our lowest fare price offering
23 to customers. It tends to be, you know, price points
24 that are, I think, very attractive to consumers that are
25 looking for a trip that would otherwise not normally buy

1 a premium product.

2 Q. When did United introduce Basic Economy?

3 A. We, at United, introduced Basic Economy shortly
4 after I arrived, in the summer of 2017 is when we put
5 Basic into place.

6 Q. A little over 6 years ago?

7 A. Correct.

8 Q. Why -- at a very high-level, why did United
9 introduce Basic?

10 A. Well, Basic Economy was put in place to compete
11 more effectively with the new-generation ultra-low cost
12 airlines, but even at that time my memory would say
13 Delta Airlines also offered a basic product as did
14 American. I believe United may have been last of at
15 least the Big 3 to offer it.

16 Q. Since first introducing Basic Economy in the
17 summer of 2017, has the kind of competitive landscape
18 shifted?

19 A. Well the competitive landscape is always shifting
20 in the airline business, it's very competitive business,
21 um, but what I'd say is, in regards to Basic Economy,
22 its use has gone up and down. Although I really think
23 the pandemic era is a really difficult period to judge
24 airlines by because of the unique demand characteristics
25 that we saw in that time period. But Basic continues to

1 be a very important part of our segmentation strategy.
2 We're seeking to, you know, offer choice to all
3 customers from the lowest end to the highest end, and we
4 believe we need to do that to be successful.

5 Q. Could you please turn back to Exhibit 130, which
6 is the tab I think behind the demonstrative, and turn to
7 Slide 131. There's no confidential information in this
8 slide. It's the Bates ending 4796.

9 A. (Turns.) Okay, I have it.

10 Q. At a high level, Mr. Nocella, what is this slide
11 reflecting?

12 A. This slide is meant to give the reader an
13 understanding of the difference between a Basic Economy
14 fare and a Standard Economy fare.

15 Q. And directing your attention to the right-hand
16 side under "Product," um, what, um, customer segment is
17 United targeting with Basic Economy?

18 A. This is the price-sensitive customers.

19 Q. And does United -- again not in the weeds, but at
20 a very high level, does United have a strategy with
21 respect to how it prices Basic Economy?

22 A. We almost always, if not always, price-match our
23 competitors.

24 Q. In terms of the actual airplane itself, where do
25 the customers in Basic Economy physically sit?

1 A. They sit in the main cabin, but there is not a
2 differentiated seat for a Basic Economy passenger
3 relative to a Standard Economy passenger.

4 Q. Who today, um -- when you talk about matching, um,
5 competitive pricing, who are you matching, what other
6 airlines?

7 A. Every airline, whether it be Delta, American, or
8 Spirit or JetBlue. Every airline.

9 Q. The, um -- so it's a normal seat on the airplane
10 with Basic Economy on a typical United jet, it's a
11 normal seat?

12 A. A standard seat, yes.

13 Q. What is the seat pitch?

14 A. Generally United Airlines, in the main cabins,
15 it's a 30-inch seat pitch, unless you're sitting in
16 Economy Plus, where it's 33.

17 Q. Does United offer Basic Economy -- you know
18 thinking back to that network map, is Basic Economy
19 offered across the network?

20 A. It's offered across the network, yes.

21 Q. Do you offer Basic Economy even on routes where
22 there is no ULCC present?

23 A. We do. We're trying to be consistent and offer a
24 product type across all the different, you know,
25 consumers in our hubs, and so we have introduced Basic

1 Economy to places like Hawaii where neither Spirit nor
2 Frontier fly.

3 Q. And again not seeking confidential information and
4 staying at a very high level, how do you determine how
5 many Basic Economy seats to offer on any given flight?

6 A. We use, you know, revenue management techniques,
7 is the standard definition in the industry. So we have
8 a bunch of mathematical computer models that look at the
9 demand for each one of our flights day by day and those
10 flights determine all the different segments of business
11 we have on board the flight. Basic Economy tends to be
12 our lowest yield on price on board the aircraft. So the
13 computer models determine how many seats that we have
14 available to sell for that particular product. And it
15 depends on overall demand, whether it's low or high.

16 Q. I want to direct your attention now, if I could,
17 to a little over a month ago, October 18th of 2023, did
18 United have an earnings call that day?

19 A. We did.

20 Q. Did you participate in that call?

21 A. I did.

22 Q. Was Basic Economy discussed on the October 18th,
23 2023 earnings call?

24 A. We had quite a significant increase in the number
25 of Basic Economy passengers we're able to accommodate in

1 that quarter and so that was a topic of the call.

2 Q. As a percentage, was the -- well what percentage
3 of United passengers in Q3 2023 flew Basic Economy?

4 A. I think it was about 12 percent of our passengers
5 is what I said.

6 Q. And you indicated that was a significant increase
7 from prior quarters?

8 A. I believed it was a significant increase from
9 year -- normally I compare things year to year, so I
10 probably compared it year to year.

11 Q. Without turning this into a math problem, but
12 knowing how many passengers fly on United in a given
13 quarter, is there any way to quantify what 12 percent
14 means in terms of the number of people?

15 A. Sure. I mean it's millions of passengers per year
16 and per quarter. There's a number of ways to kind of
17 assess it, but it's in the neighborhood of many many
18 millions, tens of million. And so 12 percent of tens of
19 millions is millions of passengers. So it's millions of
20 passengers that we have classified as Basic Economy.

21 Q. Does United have any expectations about Basic
22 Economy going forward in terms of whether it will grow,
23 stay the same, decrease?

24 A. Sure, it's always subject to market conditions,
25 but what I would tell you is that the United Next plan,

1 which allows us to upgauge our fleet, allows us to
2 accommodate more and more Basic Economy passengers
3 profitably. So we look forward to competing, you know,
4 even more aggressively in the space in the future.

5 Q. Competing aggressively for the Basic Economy
6 segment?

7 A. Yes.

8 Q. Do United have any observations as to what might
9 have caused the increase in Basic Economy passengers
10 that was reported in --

11 MR. TEITELBAUM: Objection, hearsay.

12 THE COURT: Well sustained on that foundation, but
13 you may inquire.

14 Q. (Pause.) You indicated it was a significant
15 increase in Basic Economy passengers, is that correct?

16 MR. TEITELBAUM: Objection, leading, and hearsay
17 as to the prior statement.

18 THE COURT: Well he asked that. Don't lead the
19 witness. But you may inquire.

20 Well not to beat around the bush. Have you done
21 any analysis of this increase to which you testified?

22 THE WITNESS: Well we, um, measure the number of
23 passengers we carry by cabin, so we can see the
24 increase, and we generally measure things year to year,
25 and we had a significant increase in the quarter.

1 THE COURT: To which you've testified?

2 THE WITNESS: Correct.

3 THE COURT: Now he's asking the question why? The
4 government objects. I say "Well I don't know that he
5 really knows. Has he done any analysis?"

6 So now I'm asking, have you done any analysis of
7 that significant increase?

8 THE WITNESS: Sure.

9 Our perspective on this is that the gauge plan
10 that I've talked about, that we're -- as we upgauge the
11 aircraft, we have more and more seats to sell. And so
12 the upgauging of the airline has allowed us to offer
13 more seats in this class of service.

14 Q. Turning to a different subject, Mr. Nocella.

15 As Chief Commercial Officer, are you generally
16 familiar with how United makes decisions regarding
17 capacity and route entry and exit?

18 A. I am.

19 Q. Does United add and remove capacity in and out of
20 different cities frequently?

21 A. We regularly do change our schedule, yes.

22 Q. And again just in very general terms, how do you
23 -- what factors determine how you make those decisions?

24 A. Well we're trying to bring a broad network out of
25 the 7 hubs that we fly to from the United States to make

1 sure that passengers in those cities, um, you have an
2 opportunity, whether they are going on a vacation or a
3 business trip or to see the grandparents, the ability to
4 get where they want to go. So we offer the most
5 comprehensive network we can out of those cities. And
6 then we look at the profitability of those flights to
7 make sure that we have the right aircraft type. If
8 demand is high, maybe it's a big plane, if demand is
9 low, maybe it's a small plane. And ultimately if the
10 flights are unprofitable, what do we need to do to make
11 them run profitable or do we just discontinue the
12 flight.

13 Q. Did United recently make an announcement with
14 respect to adding capacity in Florida?

15 A. We did.

16 Q. What was the gist of that announcement?

17 A. That announcement was we are planning to add
18 approximately 20 percent capacity, I believe it was year
19 over year, into the major Florida cities like Fort
20 Meyers, Orlando, and Miami, the Fort Lauderdale area.

21 Q. And will that 20 percent increase in capacity to
22 Florida include Basic Economy?

23 A. We fly Basic Economy fares to Florida, yes.

24 Q. I want to turn to, um, your Quarter 3 revenue
25 results.

1 Did United discuss its Quarter 3, 2022 revenue
2 results on the October 18th call?

3 A. We did.

4 Q. And what did United disclose regarding its profit
5 margins?

6 A. We disclosed --

7 MR. TEITELBAUM: Hearsay as to what United
8 previously --

9 Q. What were United's profit margins?

10 A. United produced approximately an 11 percent profit
11 margin in the quarter.

12 Q. How did that compare, um, as a percentage of
13 industry growth or profit?

14 THE COURT: I don't know what that means? It may
15 mean something to him.

16 Compared to what?

17 Q. Are you personally familiar with the percentage of
18 industry profit and revenue growth attributable to
19 United?

20 A. So, um, I'm aware of the revenue change year over
21 year and, um, that, you know the number we've been
22 quoting, which is the combination of Delta and United,
23 accounted for over 90 percent of the incremental revenue
24 year over year, was what I said in the conference call.

25 Q. Delta and United accounted for over 90 percent?

1 A. That's correct.

2 Q. Thank you, Mr. Nocella.

3 MR. HAFER: I have no further questions, your
4 Honor?

5 THE COURT: Counsel?

6 MR. TEITELBAUM: Good morning, Mr. Nocella. How
7 are you doing?

8 THE WITNESS: Good. I'm great.

9

10 CROSS-EXAMINATION BY MR. TEITELBAUM:

11 Q. So, first of all, I just have a couple of
12 additional questions for you about United Next.

13 One of the things that you mentioned -- and while
14 we're talking we also have a binder, there's always an
15 ample supply of binders in this case, and so we'll be
16 distributing those.

17 I do have just a couple of questions for you about
18 United Next. There's no need for you to look in there
19 yet, but I'll let you know.

20 You mentioned that was an effort by United to
21 decommo-ditize air travel, right? And I think you
22 described that as turning away from a pure focus on
23 price, is that fair?

24 A. Um, at a high level, yes. Yes.

25 Q. And so United is looking to offer -- to have

1 offerings for the travelers that are focused on things
2 beyond just price, correct?

3 A. We're looking to accommodate all travelers, many
4 of which are looking beyond just price.

5 Q. And so actually one of the key tenets of United
6 Next is an increase in the availability of premium
7 seats, right?

8 A. Yes, absolutely.

9 Q. And in fact what United's plan is, as a part of
10 United Next, is to increase premium seats available by
11 about 75 percent through 2026, is that accurate?

12 A. It depends on how you measure it. To my memory
13 that is a measurement of seats -- premium seats per
14 departure that are increasing pretty rapidly, yes.

15 Q. So part of the upgauging of fleet size that United
16 is doing, in terms of the size of the aircraft, is to
17 make more room for first class, for instance?

18 A. Absolutely.

19 Q. And also for the Extra Leg Room and Premium
20 Economy seats, right?

21 A. That is correct.

22 Q. And fair to say those extra amenities that a
23 person can get closer to the front of the plane, those
24 come at a cost, right?

25 A. Absolutely.

1 Q. All right. So you were asked some questions on
2 your direct examination about how Basic Economy is sold,
3 so I'd just like to ask you a little bit more about
4 that.

5 First of all, I think you mentioned that a
6 customer knows when they're buying a Basic Economy seat
7 based on how it's labeled on the website?

8 A. That's correct.

9 Q. But at the same time, if you go onto a United
10 plane, there are no seats on the plane that are
11 indelibly stamped with the words "Basic Economy," right?

12 A. That is correct.

13 Q. And that's because United is able to vary either
14 up or down the amount of Basic Economy seats that are
15 offered at any particular time, right?

16 A. That is absolutely correct.

17 Q. And I think what you mentioned before is that that
18 largely depends on what the demand environment is on a
19 particular flight, right?

20 A. Correct.

21 Q. So a flight for which there is extremely strong
22 demand is going to have less Basic Economy offered,
23 right?

24 A. That's correct.

25 Q. And a flight for which there is weak demand will

1 have more Basic Economy offered?

2 A. That's correct.

3 Q. Because ultimately for United this is a question
4 about maximizing the value that it's able to capture
5 from those seats on the aircraft, right?

6 A. That's correct.

7 Q. It's a business decision?

8 A. Yes.

9 Q. And in terms of the stats about the percentage of
10 how much Basic Economy is being offered, um, I think as
11 of the time of your deposition in June, United was
12 offering Basic Economy in about the high single-digit
13 percentages across its capacity, is that fair?

14 A. Um, you know it depends on how you measure this,
15 but I do think domestically I would have said
16 approximately 12 percent is where we are today.

17 Q. 12 percent is where you are today. But fair to
18 say that's fluctuated, there have been periods where
19 it's been lower than that, um, before Q3 of this year?

20 A. Yeah, during the pandemic there were time periods
21 where it was virtually nil for a number of
22 pandemic-related reasons.

23 Q. And, um, you mentioned on your direct testimony
24 that United's, a strategy to compete with other
25 carriers, is to match their prices, right?

1 A. That's correct.

2 Q. And that includes, for ultra-low cost carriers,
3 United's strategy is to match their price dollar for
4 dollar?

5 A. The best we can.

6 Q. And Basic Economy is something that helps United
7 with that competitive strategy, right?

8 A. It does, yes.

9 Q. (Pause.) So let's talk a little bit more about
10 some of the other considerations besides the demand
11 environment that would determine on how much or how
12 little Basic Economy is offered on a particular route.

13 As of June of this year, for instance, and I'm
14 speaking about the Denver Airport, United had actually
15 minimized its Basic Economy offerings out of that
16 airport, right?

17 A. That's correct.

18 Q. And that's because United competes with Southwest
19 Airlines in Denver, right?

20 A. We compete with Southwest everywhere, but in
21 Denver we've chosen a different strategy to be price
22 competitive.

23 Q. And so United made a business judgment that it
24 would actually be a more effective strategy not to offer
25 Basic Economy at any significant levels out of Denver,

1 correct?

2 A. It depends on how you measure "significant." We
3 do have Basic Economy out of Denver, but it is minimal
4 relative to the other hubs.

5 Q. United also has, um, price ceilings at times where
6 it's not going to sell a Basic Economy ticket if the
7 price would be above a certain price point, is that
8 fair?

9 A. The way we would describe that at United is, um,
10 the booking classes are a ladder, and there's a point at
11 which we don't believe the price point for Basic Economy
12 no longer makes sense, and we go to just Standard
13 Economy.

14 Q. So if the demand environment on a route is such
15 that the lowest fare is going to be above that ceiling,
16 then the lowest fare is just going to be a regular
17 economy ticket, right?

18 A. That's correct.

19 Q. So I'd like to just look at an example of United's
20 Basic Economy offerings and practice. And so if you
21 could turn to your binder at the tab that's marked
22 Exhibit 283.

23 MR. TEITELBAUM: And, um, I'll just state for the
24 record that we are, um, at this time not going to
25 publish this to the gallery due to some confidential

1 requests from United's counsel.

2 And if you could please turn, Mr. Nocella, to the
3 Bates number ending in .024 on that exhibit.

4 A. (Turns.) I'm there.

5 MR. HAFER: Your Honor, could I just elicit a date
6 on the document?

7 MR. TEITELBAUM: Yes, absolutely.

8 Q. And, Mr. Nocella, if you'd like, just turn briefly
9 back to the second page of this exhibit.

10 This is a domestic update from July of 2022, is
11 that right?

12 A. That's correct.

13 THE COURT: Let me ask counsel this question.

14 You said you're not going to publish this to the
15 gallery because of concerns from United's counsel. I've
16 said and I am very satisfied with this business of the
17 red boxes because when I come to work with these
18 documents, I know what at least the parties and
19 nonparties think is confidential, and so far at least it
20 seems to me I can stay away from it and fully explain my
21 reasoning.

22 Here you're not publishing anything and I don't
23 see any specifics, so I don't know if this document
24 becomes significant, what's confidential and what isn't.
25 Help me out.

1 MR. TEITELBAUM: Absolutely, your Honor.

2 Because this is pure cross-examination, we didn't
3 have a crystal clear idea of which documents we would
4 use in advance, but what I will tell the Court is we
5 will -- after this examination is over, have a
6 conversation with the defendants and also with United
7 and then provide a red-box version, if that's
8 satisfactory, your Honor?

9 THE COURT: Fully satisfactory. Thank you.

10 And go ahead with your questions.

11 Q. Mr. Nocella, given that, um, this is a, um, at
12 least for the moment, at your counsel's request, a
13 confidential document, so I'm just going to ask you not
14 to read any specific number figures off of this slide.
15 If we could just speak in somewhat more general terms
16 when we're talking about this.

17 So this is a slide that's entitled "Basic Economy
18 Trends," right?

19 A. Correct.

20 Q. And it's reflecting a percentage of the passengers
21 for which, um, Basic Economy ticketing is occurring as
22 of July of 2022, right?

23 A. That's correct.

24 Q. And one of the things that reflected here is that,
25 um, there's an observation that American Airlines did

1 not have a Basic Economy in, um, certain markets with
2 Southwest pricing, right?

3 A. That's correct.

4 Q. And so that's just a reflection of the fact that
5 not only United, but other legacy carriers will either
6 turn off or turn on or increase or decrease Basic
7 Economy levels depending on their business judgment,
8 right?

9 A. That is correct.

10 Q. And, um, in the second bullet there's a reflection
11 that the demand environment was such that the selling
12 fares were exceeding the Basic Economy ceiling, is that
13 right?

14 A. That's correct.

15 Q. So that's the phenomenon we were talking about
16 before that, um, the demand environment was such that
17 prices actually rose above what it would make sense to
18 sell as a Basic Economy ticket, right?

19 A. Correct.

20 THE COURT: And so I'm clear, and this is probably
21 obvious, you're not reserving X amount of seats for
22 Basic Economy, if you can sell seats at a higher price,
23 you're going to do that?

24 THE WITNESS: That is correct.

25 THE COURT: All right.

1 Q. And then the bottom half of this slide, there's a
2 graph that's tracking Basic Economy passenger
3 percentages for a variety of carriers, right?

4 A. Correct.

5 Q. And so one of the things that's reflected here
6 around -- on the late July or early August of 2021, um,
7 is a drop in Basic Economy availability on the part of
8 United, right?

9 A. Correct.

10 Q. And so that's a drop of roughly a factor of 6,
11 correct?

12 A. Correct.

13 Q. And that was just a reflection of what the demand
14 environment was at that time, that it made sense for
15 United to reduce its Basic Economy availability,
16 correct?

17 A. That's correct.

18 Q. Okay. We can take that exhibit down for now.
19 Thank you.

20 And so just a few more questions for you about
21 Basic Economy, Mr. Nocella.

22 The selling of Basic Economy tickets on United
23 flights, that doesn't affect the seating density layout
24 on United's aircraft, right?

25 A. It does not.

1 Q. And the selling of Basic Economy tickets does not
2 affect the hub-and-spoke nature of United's network,
3 right?

4 A. No.

5 Q. And the selling of Basic Economy tickets does not
6 affect United's aircraft utilization in terms of the
7 hours flown per aircraft per day, right?

8 A. I don't think so.

9 Q. And even with the current mix of Basic Economy
10 that's being offered by United, um, United's operating
11 costs on a unitized basis remains higher than Spirit
12 Airlines, correct?

13 A. That's correct.

14 Q. United for Q3 of this year was at about 11.51
15 cents cost per available seat mile, excluding fuel, is
16 that right?

17 A. I have to admit, I did not track that particular
18 number, so I don't know.

19 Q. But you're aware that Spirit's is lower than that?

20 A. I'm aware that we're a higher-cost airline than
21 Spirit.

22 Q. (Pause.) And you were asked some questions on
23 direct about, um, the result -- that United's
24 profitability results for this quarter, right?

25 A. Correct.

1 Q. And I think you had also mentioned that the
2 pandemic made it very difficult to draw helpful
3 conclusions about airline performance during the time
4 that the pandemic was ongoing, is that fair?

5 A. That's fair, correct.

6 Q. And in fact it's your belief that airline
7 performance for the years 2020, 2021, and 2022, was
8 basically not relevant for doing airline industry
9 analysis, is that correct?

10 A. We continued to compare our results to 2019
11 because of that, so that is correct.

12 Q. (Pause.)

13 MR. TEITELBAUM: If I could have just have a
14 moment, your Honor?

15 (Pause.)

16 MR. TEITELBAUM: No further questions. Thank you,
17 Mr. Nocella.

18 THE COURT: Any redirect?

19 MR. HAFER: No redirect, your Honor.

20 THE COURT: Thank you. You may step down. And
21 thank you.

22 You may call your next witness.

23 MR. MITCHELL: Your Honor, the defense calls
24 Richard Scheff.

25 THE COURT: He may be called.

1 (RICHARD SCHEFF, sworn.)

2 MR. MITCHELL: So, your Honor, you should have in
3 front of you a binder that has the slides that
4 Mr. Scheff have prepared as well as an enlarged copy of
5 those slides. And then in the pocket of that binder
6 there are two folders that contain the premarked
7 exhibits that Ms. Gaudet had the numbers for that we're
8 going to proffer with this witness.

9 THE COURT: Thank you.

10 MR. MITCHELL: Okay.

11

12 *****

13 RICHARD SCHEFF

14 *****

15

16 DIRECT EXAMINATION BY MR. MITCHELL:

17 Q. Good morning, Mr. Scheff.

18 A. Good morning.

19 Q. Could you please state and spell your name for the
20 record.

21 A. Yes. My name is Richard Scheff, R-I-C-H-A-R-D,
22 S-C-H-E-F-F.

23 Q. Thank you. Could you describe your educational
24 background for the Court.

25 A. Yes. I have a Bachelor's Degree in Industrial and

1 Systems Engineering from Georgia Tech, as well as a
2 Master's Degree in Industrial and Systems Engineering
3 from Georgia Tech.

4 Q. Okay. And in what years did you receive those
5 degrees?

6 A. I received the Bachelor's Degree in 1984 and the
7 Master's Degree in 1991.

8 Q. Thank you. Broadly speaking, what is your
9 professional background?

10 A. Beginning in 1979 as a college student, as a
11 co-op, I worked in the airline industry both as an
12 airline employee and as a software developer, um,
13 developing airline models, and then for the last 20
14 years as a consultant, working primarily with airlines
15 and aviation-related issues.

16 Q. Okay. And what airline did you work for in that
17 co-op position you mentioned?

18 A. I worked for Delta Airlines. Um, the co-op
19 program is a program where you go to school for a
20 quarter and then you work for a quarter and then you
21 alternate. So I worked at Delta in a variety of
22 positions at the Atlanta Airport, um, loading bags, a
23 ticket agent, a gate agent. And then later on in the
24 Station Manager's office, um, scheduling and planning
25 and other issues.

1 Q. What did you do for Delta once you were a full-
2 time employee?

3 A. I joined Delta full-time in 1985 as a programmer
4 in the IT department, but within the first year I moved
5 into network planning. And so for the bulk of the 13
6 years that I worked there, I worked in the Network
7 Planning area, um, at Delta.

8 Q. Okay. And what was your title when you left Delta
9 Airlines?

10 A. When I left Delta I was the System Manager in
11 Network Planning, so I was responsible simply for the
12 Delta domestic network. So responsibilities would have
13 included evaluating new market entry, market exits,
14 capacity, relations with the Delta commuter carriers,
15 um, and the use of our fleet-assignment model to assign
16 aircraft to the network.

17 Q. Okay. I think you mentioned after Delta you
18 worked for a software startup, is that right?

19 A. Yes, I left Delta and we had a small startup
20 company to build airline planning models.

21 Q. What software products did you develop at that
22 time?

23 A. We did a fleet assignment model as well as a
24 QSI-based network planning model.

25 Q. And is the fleet-assignment model you developed at

1 that startup the same fleet-assignment model you used in
2 connection with this matter?

3 A. Yes, it is.

4 Q. And when was that fleet-assignment model
5 developed, what year?

6 A. We developed that in the 1998 to 1999 timeframe.

7 Q. Okay. Since you developed that software in the
8 late '90s, has it been licensed by industry
9 participants?

10 A. Yes, a number of airlines and manufacturers have
11 licensed the model.

12 Q. Okay. And what have you been doing professionally
13 since leaving the software company?

14 A. Um, beginning at 2002, I've been working as a
15 consultant, I started a company called ATG, and I
16 essentially continued consulting from 2002 through my
17 current position.

18 Q. Okay. And again broadly speaking, what sort of
19 consulting mandate have you worked on over the past 20
20 years?

21 A. We've worked on a variety of different types of
22 analysis, many of them involving network planning,
23 future business plans, aircraft fleet purchases, um,
24 we've done some work with reorganization. So a variety
25 of projects. But primarily focusing on network and

1 fleet more than anything else, I would say.

2 Q. Okay. And what types of clients have hired you on
3 a consulting basis?

4 A. Well many airlines of different types and
5 geographic locations. Also aircraft manufacturers.
6 Financial firms interested in potentially investing in
7 business plans. And airports as well.

8 Q. Okay. In your role as a consultant, have you ever
9 advised on the effect of combining two fleets as the
10 result of a merger?

11 A. Yes, I have.

12 Q. Okay, and you don't have to name names, but just
13 at a high level would you please describe that
14 assignment?

15 A. Yes, we had a financial institution who wanted to
16 understand the value that could be created by a merger
17 of two airlines that they were interested in investing
18 in, so in order to understand the potential revenue
19 gains and cost savings. So we did a, um, analysis to
20 evaluate what the -- what the synergies and implications
21 that that merger could create.

22 Q. Okay. Have you ever published any papers?

23 A. Yes, I have co-authored a paper.

24 Q. About what?

25 A. When I was at Delta Airlines we were, um, a

1 finalist for the Edelman Prize, which is awarded to the
2 best use of operations research in -- the best use in an
3 actual business application. So as a finalist for that,
4 the, um, the "Interfaces" magazine, which is their
5 journal, publishes a paper for all the finalists. So we
6 wrote a paper describing our work in building and then
7 implementing the fleet assignment model at Delta.

8 Q. Okay. And have you ever testified as an expert
9 witness before?

10 A. No, I have not.

11 Q. Okay. Have you prepared a slide presentation to
12 assist with your testimony today?

13 A. Yes, I have.

14 MR. MITCHELL: So, your Honor, with the Court's
15 permission I'd like to publish Mr. Scheff's
16 demonstrative slides to the gallery.

17 THE COURT: You may proceed.

18 Q. Mr. Scheff, who retained you in this matter?

19 A. I was retained by JetBlue and Spirit.

20 Q. And when were you retained in this matter?

21 A. Within late June of this year.

22 Q. In 2023?

23 A. 2023, correct.

24 Q. Okay. And what was the scope, as you understood
25 it, of your assignment?

1 A. The scope was to, um, evaluate certain aspects of
2 the airline industry and in particular to assess whether
3 the combined and merged JetBlue and Spirit would be able
4 to increase utilization compared to the standalone
5 separate entities, and in particular with respect to,
6 um, seat-departure production.

7 Q. Okay. And broadly speaking, what analyses did you
8 perform in connection with that assignment?

9 A. I did a number of different analyses. I looked at
10 the carriers' networks, where they flew, their
11 scheduling patterns, their fleets, how they utilized the
12 fleets. So it's a broad cross-section. And since we
13 have their scheduling and their fleet and how those were
14 used.

15 Q. Okay. And after conducting those analyses, did
16 you form any opinions related to your assignment?

17 A. Yes, I did.

18 Q. And did you memorialize those opinions in a report
19 or reports?

20 A. Yes, I did.

21 Q. Okay. How many expert reports did you prepare in
22 this matter?

23 A. I prepared one expert report. There were two
24 amendments. The first amendment corrected some small
25 typographical-type errors. And there was a second

1 amendment, um, that was correcting an error where there
2 was some double-counting of seasonal and day-of-week
3 effects that, um, Dr. Chipty pointed out in her
4 rebuttal. I recognized her correction was applicable
5 and I updated that in the second amended report.

6 Q. Okay, thank you. And can you please tell the
7 Court the opinions you formed in connection with your
8 assignment on this matter?

9 A. Yes, if we turn to the next slide.

10 So after analyzing the networks and fleets, my
11 opinion is that the combination of JetBlue and Spirit
12 would likely enable the firm to increase capacity using
13 seat departures as a measure in a variety of ways. I
14 would expect less seasonal and day-of-week reductions by
15 the combined firm than by Spirit as a standalone
16 airline. I think pooling the, um, fleets and the
17 networks of the two airlines will allow for some fleet
18 efficiency. I do believe that the combined entity would
19 have more opportunities and more incentives to fly
20 additional red-eye flying using existing aircraft. I
21 also believe that the Spirit A321 CEO aircraft, after
22 reconfiguration, could also be better used for longer-
23 haul missions. And that potentially the number of
24 Spirit aircraft that the combined firm would require
25 could be less than the separate firms.

1 Q. Thank you, Mr. Scheff.

2 MR. DeRITA: Objection, your Honor. We'd like to
3 renew the arguments made in our motion in limine
4 regarding the reliability of Mr. Scheff's analysis. And
5 we agree with your Honor that the Court should be
6 skeptical of the foundation for his opinions.

7 THE COURT: Well "skeptical of the foundation"
8 does not bar him from testifying, it goes to the weight.
9 Overruled.

10 MR. DeRITA: Thank you, your Honor.

11 THE COURT: The testimony he's given may stand.

12 MR. DeRITA: Thank you, your Honor.

13 Q. Mr. Scheff, after forming opinions you just
14 testified to, did you form an overall opinion as to the
15 number of seats available per departure after the
16 merger?

17 A. My overall opinion is that the overall seats
18 available for departure after the merger would very
19 likely increase compared to the seats that would be
20 available without the merger.

21 Q. Okay.

22 A. Notwithstanding the reconfiguration of the Spirit
23 aircraft.

24 Q. Okay. And why did you focus on seats available
25 for departure?

1 A. It was really to have an apples-to-apples
2 comparison with the seats that would be removed from
3 departure with JetBlue reconfiguring Spirit aircraft to
4 be consistent with their configuration. So that change
5 would result in a net loss of seats and a reduction. So
6 I wanted to look at how the synergy benefits could or
7 whether they could offset that reduction. And so that's
8 -- to essentially use the same metric for measuring
9 performance, I used seats per departure.

10 Q. Okay, thank you. And did you perform calculations
11 to quantify certain of the utilization benefits that you
12 just discussed?

13 A. Yes, I did. If we could turn to Slide 3.

14 Q. Thank you. Could you just very briefly walk the
15 Court through what's being reflected here in Figure 18
16 on Slide 3?

17 A. Slide 3 shows the various categories that I
18 quantified, um, basically that would result in changing
19 seats with the merger. So on the left there are the
20 seats that would be lost due to aircraft
21 reconfiguration, and then we have the benefits for
22 schedule changes, and for fleet optimization, and then
23 the net benefit of those particular, um, factors that
24 we'll quantify here. So that's what this chart
25 represents.

1 Q. Okay, so we'll talk about these numbers in more
2 detail as we go through your analysis.

3 What was the first thing you did in conducting
4 your analysis?

5 A. Well the first thing I did was look at the fleets
6 of the respective airlines and how they utilized them.

7 Q. Okay. So let's take a look at the next slide.

8 A. (Turns.) Okay.

9 Q. Explain to the Court what's reflected here in
10 Figures 1 and 2 on this slide?

11 A. Figure 1 and 2 show the, um, active fleets, along
12 with some associated statistics, for both JetBlue and in
13 Figure 2 for Spirit for July 2019 and July 2023.

14 Q. Thank you. And could you just briefly walk the
15 Court through these aircraft types and give some color
16 on sort of their features and the types of missions they
17 might fly?

18 A. Sure. So Figure 1 was JetBlue, so the first
19 aircraft is the Embraer 190. So this is, um, it's a 100
20 seat airplane, it has a 2-by-2 configuration. It's
21 typically used for lower-demand flights and for shorter
22 stage length. The average stage length is only around
23 500 miles.

24 The next fleet is the Airbus A2 2300. So this is
25 a new airplane, it was not available in 2019, but

1 JetBlue has introduced it and they have a significant
2 number on order. It's a, um, 135-seat airplane, it has
3 transcontinental range, it has very low fuel burn. So
4 it's the lowest-cost airplane that they would have.

5 The next two, the A320 200 CEO and the A321 CEO,
6 they're similar aircraft, they can fly virtually any
7 mission on the JetBlue North American route. The
8 primary difference is the 321 is a larger airplane so it
9 would be used where there's higher demand.

10 And then we have the A321 Mint aircraft. That's
11 an airplane that has a premium configuration. They're
12 lie-flat business seats, it flies very long stage
13 lengths, generally transcon flights, and it's really
14 designed to compete effectively with Delta, American,
15 and United, in markets like New York to Los Angeles or
16 Boston to Los Angeles.

17 And lastly for, um, JetBlue, the A321 LR NEO. So
18 that's also a 321, but "LR" stands for "Long Range," so
19 it has much longer range. And it is what JetBlue is
20 using to fly to transatlantic. And they can use it for
21 ultra-long-haul flying that the other aircraft are not
22 capable of flying.

23 Q. Okay. And just quickly let's look at Figure 2 and
24 just give the Court some color on the Spirit fleet?

25 A. Okay, yes. So the Spirit fleet, they're all the

1 Airbus A320 family, the 319, 320, and 321. So the
2 primary difference here is the size. So the 321 is the
3 largest aircraft, and then the 320, and with the 319
4 being the smallest. So their use would be largely
5 dictated by the demand for each flight.

6 They have similar capabilities with the exception
7 that the A321 CEO is more limited from a range
8 perspective from flying a transcontinental flight. But
9 other than that, they're similar airplanes that, um,
10 Spirit uses and really assigns them based on demand.

11 Q. Okay, we'll talk about the A321 CEO issue a little
12 bit later. But just overall, do JetBlue and Spirit have
13 complementary fleet?

14 A. Yes, they do. They both have, you know, large
15 numbers of Airbus A320s and A321s so they're, um --
16 yeah, they could be flown by the same pilots. So their
17 fleets are very complementary, yes.

18 Q. Okay. And what does the complementary nature of
19 the fleets allow you to do?

20 A. The complementary nature of the fleets allows me
21 to simply combine the two separate airlines. So after
22 the reconfiguration, instead of having, for example, you
23 know 69 A320 CEOs here that are flying Spirit and 118
24 that are flying JetBlue, you can combine them, they have
25 the same number of seats, the same costs, the same

1 capabilities. So it allows you to take two separate
2 fleets from two separate airlines and treat them as a
3 single fleet.

4 Q. Thank you, Mr. Scheff. So we can turn to the next
5 slide.

6 After you looked at the fleets of the two
7 airlines, what analyses did you perform?

8 A. I looked at several different analyses to assess
9 whether, um, there would be additional capacity. So
10 starting with, um, looking at seasonality and day-of-
11 week variations.

12 So if we could turn to Slide 6.

13 Q. So, Mr. Scheff, what does "seasonality" mean in
14 the airline industry?

15 A. "Seasonality" refers to the fact that passenger
16 demand would vary seasonally depending on a number of
17 factors, um, the geography. But in different seasons of
18 the month there are peak periods, um, and there are
19 other periods that are offpeak. Seasonality can also
20 vary by type of passenger as well as geography.

21 Q. Okay. And how does seasonality relate to
22 utilization?

23 A. Generally an airline would be highly motivated in
24 the peak seasons to maximize their utilization. They
25 fly as much as possible when the seasonal demand is

1 high. They would often scale back and fly less when the
2 seasonality, um, provides lower demand.

3 Q. Okay. And, um, what analysis did you conduct
4 related to the seasonal patterns of JetBlue and Spirit?

5 A. What I did is I used 2019 and I looked at the 320
6 and 321 fleets. So, um, 2019 is really the last full
7 year without covid and other factors. So I looked at
8 the seasonal patterns that the two airlines flew to
9 identify how they flew seasonally.

10 Q. Okay. And is that what's reflected in Figure 3
11 here on Slide 6?

12 A. Yes, it is.

13 Q. Okay. Can you just explain to the Court what is
14 the dotted line and then how do the blue and gold lines
15 relate to that?

16 A. Okay. So the dotted line reflects the, um, what I
17 would call the "peak seat production capacity," and what
18 I used for each airline was how they flew during the
19 peak months. So what was their capability with their
20 fleet to produce seat departures. So that 100 percent
21 line represents their capability.

22 The Blue line shows for each month what JetBlue's
23 scheduled seats were relative to their peak for each
24 month. And, um, the gold line shows the same
25 information for Spirit, so what was their seat

1 production and compared to their peak capability.

2 Q. Okay. And just to make it clear, could you just
3 give an example of the information you're trying to
4 convey using January 2019 as the example.

5 A. Sure. So if we look at January, um, the Blue line
6 which represents how did JetBlue fly relative to their
7 capability, it looks just at 95 or slightly over. So
8 their January flying was at 95 percent of what their
9 capability was. Whereas in January the Spirit line is
10 approximately 90. So they reduced their flying more so
11 in January than did JetBlue.

12 Q. Okay. And then what about the gray bars on the
13 bottom, what do those represent?

14 A. Those show the percentage difference between the
15 JetBlue line and the Spirit line. So the 6 percent for
16 January would indicate that JetBlue flew, um, 6 percent
17 more relative to their capacity than did Spirit.

18 Q. Okay. And big picture, what's your takeaway from
19 this figure?

20 A. Well I think there's a couple of key points. I
21 think the first thing that stands out is that, um, both
22 airlines are at or very near the peak for June and July
23 and August, which is, um, very typical a peak seasonal
24 period for most airlines, it's very common for airlines
25 to fly their airplanes as much as possible during that

1 period. So they both fly as much as they can. But
2 during the other months the, um, JetBlue, um, reduction
3 from peak is less than what you see from Spirit, based
4 on their 2019.

5 Q. Okay. To what do you attribute that difference?

6 A. Um, I think the primary difference is, um, the
7 demand seasonality of the customer bases for the two
8 airlines. So although I said that June and July and
9 August are peak months, and they certainly are, and
10 JetBlue has a higher percentage of their, um, schedule
11 and also a bit more of a focus on business travel.

12 For business travel, months like February, March,
13 October, are actually peak months. So the seasonality
14 patterns -- so JetBlue was very active for both leisure
15 passengers and business passengers. I believe Spirit's
16 focus is a little more narrow on leisure passengers, so
17 their capacity pullbacks are more reflective of leisure
18 seasonality. So that's what I attribute the difference
19 to.

20 Q. Okay. And then what did you do with the seasonal
21 pattern you identified in terms of determining whether
22 additional seats could be put into the market by the
23 post-merger airlines?

24 A. What I did was, assuming that a future post-merger
25 JetBlue from a seasonal perspective would fly similar to

1 the way that they had done, how many additional seats
2 would be produced by flying those Spirit aircraft that,
3 in the 320 and the 321 fleets, on the JetBlue seasonal
4 pattern as opposed to the Spirit seasonal pattern.

5 Q. Okay, so we'll get to those calculations in a few
6 minutes.

7 But first, what leads you to believe that JetBlue
8 would continue to fly a less-seasonal pattern than
9 Spirit was flying in the future after the merger?

10 A. Well that's what JetBlue has done historically.
11 Also their, um, focus on business travel and leisure
12 travel, um, does -- they have a different seasonality of
13 their customer base both in terms of the markets they
14 serve and the customers within the market. And lastly,
15 reviewing Mr. Friedman's testimony, he indicated that
16 JetBlue has every intention of continuing to fly, um,
17 the same seasonal pattern. And then I guess, finally,
18 in reviewing their 2027 combined network plan, the types
19 of markets in their plan to me indicated an airline that
20 would be very consistent with what JetBlue has done
21 historically.

22 Q. Okay, one of the things you said there was, um,
23 that "JetBlue has a more business focus than the markets
24 it serves." What do you mean by that?

25 A. Um, I think a combination of several things. The

1 scheduled frequency in a number of their markets, they
2 offer more frequency, which is a very important factor
3 for business travel. Um, the product, um, is different.
4 So it's just their -- their selection of -- they'll have
5 -- for example, they'll fly Boston to Chicago and Boston
6 to Washington. So they'll have a heavy emphasis on
7 those markets. But I also believe with frequency in the
8 product they're more geared toward competing with, for
9 example Delta and American, for that passenger segment.

10 Q. Okay. But couldn't Spirit just decide today on
11 its own as a standalone company to fly a flatter pattern
12 and decrease the amount of capacity of --

13 MR. DeRITA: Objection, leading.

14 THE COURT: You are leading. But I will supply
15 the answer.

16 What I take could do that, um, I'm inclined to
17 think -- I don't see as a matter of airline
18 administration why they would want to. But if I allowed
19 him to answer, I assume his answer would be "Yes."
20 Let's move on.

21 MR. DeRITA: Also, your Honor, I believe this goes
22 outside --

23 THE COURT: It may very well, but now I've
24 revealed what I'm thinking.

25 Go ahead.

1 (Laughter.)

2 MR. MITCHELL: Thank you, your Honor.

3 Q. In addition to a seasonality analysis, did you
4 also look at the two airlines' day-of-week flying
5 pattern?

6 A. Yes, I did. And if we could turn to Slide 7.

7 Q. Okay, so we've just looked at Figure 4, which is a
8 similar chart. So could you just quickly walk the Court
9 through Figure 5 on Slide 7.

10 A. Yes, so this is a very similar analysis, but
11 instead of looking at the months of the year, it's
12 looking at the day-of-week. So the 100 percent is the
13 peak capability, so which day of the week did the
14 airline fly the maximum number of seats relative to
15 their fleet capability. So, um -- and then for each day
16 of the week I looked at the actual scheduled seats for
17 that airline compared to their peak capability.

18 So that's -- the blue line represents the JetBlue
19 pattern on a day-of-week basis for 2019, and for A320
20 and A321 fleets, and the gold line represents the Spirit
21 day-of-week capacity or production relative to capacity
22 capability.

23 Q. Okay. And again what did you take away from this
24 figure?

25 A. Um, well the takeaway here is really that there

1 are three days of the week that they're significantly
2 different patterns. So on Tuesday and Wednesday the
3 Spirit reduction is, um, a lot more than the JetBlue
4 reduction, whereas on Saturday JetBlue actually reduces
5 their seats below capability where Spirit flies at a
6 peak level. The other four days the airlines fly
7 essentially the same way. I don't see a significant
8 difference there.

9 Q. Okay. And again for what do you attribute the
10 difference here on Figure 5?

11 A. I think very similar to the seasonality, the, um,
12 demand on a day-of-week basis is quite different for
13 business travel versus leisure travel. So an airline
14 who has a bigger presence in business markets or is
15 attempting to compete more heavily, it's very important
16 to fly on, for example, Tuesday and Wednesday. Most
17 business trips are on a Monday-through-Friday basis. So
18 I think the heavier emphasis or the more balance between
19 business and leisure, whereas the Spirit line dictates a
20 more narrow focus on leisure travel, but incentivises
21 them to reduce on days where that demand is less.

22 And then for Saturday, it's really just the
23 opposite. That's the weakest day for business travel by
24 far domestically, but it's a very strong day for leisure
25 travel. So with Spirit's heavy emphasis on the leisure

1 market, then they're incentivising to flying as much as
2 they can on Saturdays. So that's what I attribute that
3 to.

4 Q. Okay. And now what did you do with this
5 day-of-week pattern you identified in terms of
6 determining whether additional seats could be put into
7 the market by the combined airline after the merger?

8 A. Again using the assumption that a future JetBlue,
9 a merged JetBlue would operate with a similar
10 day-of-week pattern to what they have historically done,
11 I looked at what would be the change in seats from the
12 Spirit line. So essentially if we bring the gold line
13 up to the blue line, or in the case of Saturday down to
14 the blue line, what would be the net change in seat
15 departures.

16 Q. Okay, and did you prepare calculations of the
17 seasonal and day-of-week patterns we just discussed?

18 A. Yes, I did. If you could turn to Slide 8.

19 Q. Okay. And could you just explain to the Court,
20 um, first at a high level, just what are the figures on
21 this slide reflecting?

22 A. These figures, since we show the seat changes that
23 would occur, um, on the left on a seasonal basis for
24 Figure 4 and on the right on a day-of-week basis, um, if
25 the Spirit aircraft were flown at the JetBlue seasonal

1 and day-of-week patterns.

2 Q. Okay, so let's start with the figure on the right,
3 which is Figure 6.

4 A. Okay.

5 Q. On Slide 8.

6 How did you calculate the annual seat change
7 figure in this Figure 6? And let's use the row Tuesday
8 as the example.

9 A. Okay, sure.

10 So if we look at Tuesday in 2019, on seats per
11 day, scheduled seats per day on Tuesday, Spirit flew at
12 88,085 on average. In order to determine what the peak
13 day was, I looked at each for the 7 days. So here
14 Friday is their peak day. So they flew 97,436. So for
15 each day of the week, I took the ratio of how many seats
16 they offered relative to their capability, which was
17 defined by the peak day, and that's the number shown.
18 So for Tuesday, they flew at 90.4 percent.

19 I did the same calculation for JetBlue. So on
20 Tuesday JetBlue flew at 96 percent of their peak
21 capability, which was also, um, Friday was the peak day.
22 So if the Spirit airplanes flew the JetBlue pattern at
23 96 percent, that 88,000 seats per day would now be
24 92,551, which would produce an additional 5,466 seats
25 per day. And annualizing that would be 284,208 seats.

1 So that was the calculation done for Tuesday, Wednesday,
2 and Saturday. And the other days, I assume there was no
3 change, so I just left them the same as they were.

4 THE COURT: You're not saying that JetBlue would
5 increase its capacity above the blue lines on your
6 charts, what you're saying is that where Spirit is lower
7 than those blue lines, JetBlue would have the incentive
8 to, after they've reconfigured the Spirit planes, fly
9 the Spirit planes up to the blue line percentage, is
10 that right?

11 THE WITNESS: Yes, your Honor, that's correct.

12 THE COURT: Okay.

13 MR. DeRITA: Objection.

14 THE COURT: To my question?

15 (Laughter.)

16 MR. DeRITA: No, of course not.

17 THE COURT: No, don't say of course not, I've
18 sustained objections to my questions. I don't --

19 MR. DeRITA: Objection to Mr. Scheff's testimony
20 and analysis on this point, and on Figure 4, which is a
21 related analysis, so slightly different, um, as not
22 being based on sufficient facts.

23 THE COURT: Well actually that objection again, in
24 my mind, goes to the weight. The fact that this witness
25 doesn't have advanced degrees, and I'm not -- I mean no

1 disrespect from that, he's done this work, and I can
2 understand, um, what he's saying. I purport to
3 understand what those with advanced degrees are saying.
4 But I can understand him.

5 (Laughter.)

6 THE COURT: And maybe he's not adding anything
7 beyond what my Clerk and I could figure out on our own.
8 But it helps to have him figure it out. Whether I
9 accept it or not remains. But I'm finding his testimony
10 helpful to the factfinder. And that's sufficient, I
11 think, to allow him to testify. You'll get a chance to
12 cross-examine him.

13 I'm on the record saying generically that I'm
14 skeptical, and I am.

15 Go ahead, Mr. Mitchell.

16 MR. MITCHELL: Thank you, your Honor.

17 Q. Just two points. Just to address counsel's
18 statement, Mr. Scheff, just so the Court understands the
19 information that supports this Figure 6, just explain
20 again where you got these seats per day and where you
21 got the numbers for those blue and gold bars that were
22 in Figure 4 that we talked about earlier?

23 A. Yes, both airlines publish their schedules. So I
24 used, um, from "See-And-View MI," so the published
25 schedules for every day of 2019. So again using the 320

1 and 321 fleets. And in terms of the aircraft available,
2 both airlines provided me the number of active airplanes
3 by month that they used in the schedule. So knowing the
4 number of airplanes and knowing the number of seats, I
5 was able to do these calculations.

6 Q. Thank you. One of the calculations you talked
7 about, um, in your previous answer was that you, quote,
8 "annualized" the seat change per day to get to an annual
9 seat change. It may seem very obvious, but just explain
10 what do you mean when you say you "annualized" that
11 number?

12 A. Right. So essentially there are 52 Tuesdays, I
13 believe, possibly there were 53 that year. But
14 converting that daily change on the average Tuesday to a
15 full year of Tuesdays would be the annual number.

16 Q. Okay, thank you. And how did you get to the
17 number 251,947 in the net effect route?

18 A. That's simply the sum of the seats that would be
19 added on Tuesday and Wednesday, um, with the seats that
20 would be reduced on Saturday netted out. So it's the
21 sum of those three days of the week where I would
22 anticipate a change in the schedule pattern for the
23 merged airline.

24 Q. Okay. And then there's another number there
25 that's shaded. How did you get to that shaded number?

1 A. Yes, so the 251,000 number is reflective of if the
2 Spirit fleet were flown at the JetBlue levels. But the
3 fleet would be reconfigured. And so the 320 and 321
4 aircraft going forward would have fewer seats. So the
5 223,000 number represents the additional seats after
6 adjusting for the fact that the JetBlue aircraft in the
7 future would have fewer seats than the Spirit aircraft.

8 Q. Okay. And to just sort of capture that. The net
9 effect number is, um, as his Honor put it, is "bringing
10 the gold line up the blue," that's the net effect
11 number?

12 A. Correct, and also the gold line down to the blue
13 on Saturday. But, yes, that's the net effect.

14 Q. And then you had to adjust that number to take
15 into account that there would be fewer seats on the
16 Spirit aircraft after they're retrofitted to the JetBlue
17 specifications?

18 A. That's correct.

19 Q. And you refer to that row there as the "LOPA
20 adjustment." What does "LOPA adjustment" mean?

21 A. "LOPA" stands for a "Layout of Passenger
22 Accommodation," it's essentially the number of seats
23 that are on the airplane. So that's what I used.

24 Q. Okay, thank you.

25 MR. MITCHELL: So let's zoom back out so we can

1 see the figures again. And now let's take a look at the
2 figure on the left, which is Figure 4.

3 Q. And can you very quickly walk the Court through
4 your -- and this figure, by the way, what does this
5 reflect, what calculation?

6 A. This reflects the calculation that if the Spirit
7 aircraft were flown on the JetBlue seasonal pattern
8 month by month, what would be the change in seats as a
9 result of that.

10 Q. Okay. And can you very quickly walk the Court
11 through the calculation you performed for the seasonal
12 analysis and let's use January as the example route.

13 A. Sure. So we will start with January. So, um,
14 looking at the active fleet for the 320s and 321s, so
15 how many airplanes at each site were there, um, I
16 calculated the number of flying days, so how many days
17 were available to fly. That's important because over
18 the course of the year the size of the fleet changed, so
19 there would be a nonseasonal effect that I don't want to
20 have included. But looking at that, um, in January,
21 Spirit flew 926 seats per flying day. So on average a
22 single airplane would fly 926 seats.

23 So, um, I did that calculation for each month.
24 And if you recall from the line chart, of course June,
25 July, and August, were the peak months. So here August

1 was the peak. So using their August production as a
2 measure for their capability, what I did in the next
3 column was scale. So in January Spirit flew at 90.4
4 percent of what their capability was as defined by how
5 they flew in August. So I did that calculation for
6 every month. The same calculation was done for JetBlue.
7 So they flew in January at 95.9 percent.

8 So the next column would show if those Spirit
9 aircraft were flown at 95.9 percent of their capability
10 as opposed to 90.4, then instead of 926 seats per day,
11 they would produce 983. And then over the course of a
12 month, the entire combined fleets would produce an
13 additional 140,552 seats.

14 Q. You said "across the course of the months, the
15 entire combined fleets."

16 A. Yeah.

17 Q. What did you mean by that?

18 A. Um, so the 320s and 321s combined and then across
19 all 31 days. So, um --

20 Q. But only Spirit's fleet?

21 A. Well these are -- well, right, for the change. I
22 mean the JetBlue fleet was used to determine their
23 ratio. But, yes. The additional seats were only on the
24 Spirit fleet.

25 Q. Okay. And then did you perform that same type of

1 calculation for each of the other months here in 2019?

2 A. Yes, I did.

3 Q. And then what is the full-year number that's
4 shaded in the bottom there?

5 A. Yes, the number at the bottom shows the seat
6 change that would occur across all 12 months using the
7 2019 pattern -- so it's essentially the sum of each
8 month-by-month seasonality change.

9 Q. Okay. Did you make the same LOPA adjustment we
10 discussed in Figure 6, did you make that same adjustment
11 to this number here in Figure 4?

12 A. I did. The difference here is I included it in
13 each row. So the 140,552 has already been reduced to
14 account for the reduction in seats on the JetBlue
15 aircraft.

16 Q. Okay, so just to be clear for the record, does
17 that number, the shaded number, the 1.352 million
18 number, does that already incorporate the same downward
19 LOPA adjustment we just discussed?

20 A. Yes, it does.

21 Q. Okay. And you said that these seasonality and
22 day-of-week analyses are based on 2019 data. Did
23 Spirit's fleet increase in size between 2019 and 2023?

24 A. Yes, their 320 and 321 fleet was substantially
25 larger in 2023 than it was in 2019.

1 Q. Okay. So what did you do to convert these
2 additional seats you identified here to the number of
3 seats that would be generated based on the size of
4 Spirit's 2023 fleet?

5 A. I looked at the number of aircraft that were in
6 fleet, that were actively flying in 2019, and 2023, and
7 used the ratio of increase. So how much more was the
8 fleet in 2023. And used that increase in size to scale
9 the 2019 number. So essentially the pattern comes from
10 2019, but it was scaled to a volume representing the
11 larger fleet in 2023.

12 Q. Okay. And did you calculate the size of the
13 additional seat departures attributable to these
14 seasonality and day-of-week analyses based on the size
15 of Spirit's 2023 fleet?

16 A. Yes, I did. And if we can turn to Slide 9.

17 Q. Okay. So the portion of this slide with the red
18 bar here, do those numbers reflect the additional seats
19 available after the scaling calculation you just
20 mentioned?

21 A. Yes, they do.

22 Q. Okay. And were there any other adjustments that
23 you made to these numbers in the schedule change bar
24 there?

25 A. Yes, I did make an adjustment to the number from

1 the seasonal change. Many of the seasonal reductions
2 were implemented on a day-of-week basis. So if they're
3 reducing in January, many of those reductions, um, came
4 on a Tuesday and Wednesday. So to avoid having those
5 reductions counted in both columns, I reduced the
6 seasonal increase to, um, eliminate any double-counting
7 in that manner.

8 Q. Okay. And just to be clear, is that the
9 double-counting error that Dr. Chipty identified?

10 A. Yes, it is.

11 Q. And so the seasonal numbers reflected here on
12 Figure 18, on Slide 9, are those numbers net of any
13 double-counting identified by Dr. Chipty?

14 A. Yes, they are.

15 Q. Okay, thank you, Mr. Scheff.

16 MR. MITCHELL: And let's go to the next slide.

17 And, your Honor, I'm cognizant that we're going to
18 be close to the break and we're about halfway through,
19 so we have about a half an hour.

20 So transitioning topics, would you like to break
21 now?

22 THE COURT: That makes sense. We will break now
23 and we'll start again at 10 minutes after 11:00. We'll
24 stand in recess.

25 THE CLERK: All rise.

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(Recess, 10:40 a.m.)

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Judge William G. Young, on Tuesday, November 28,
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 11-28-23

RICHARD H. ROMANOW Date